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MAR - 1 2008

11 Attorneys for Plaintiff
12 UNITED STATES OF AMERICA

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14 UNITED STATES DISTRICT COURT

15 SOUTHERN DISTRICT OF CALIFORNIA

08CR0632 BEN

16 UNITED STATES OF AMERICA,) Magistrate Case No. 08MJ0506

17 Plaintiff,)

18 v.)

19 OMAR HERNANDEZ,)

20 Defendant.)

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

11 IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES
12 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Jeffrey D.
13 Moore , Assistant United States Attorney, and defendant OMAR HERNANDEZ, by and through and
14 with the advice and consent of defense counsel, Robert R. Hessler, Esq., that:

15 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
16 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
17 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
18 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
19 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii)
20 and (v)(II).

21 //

22 JDM:rp:2/22/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **March 24, 2008**.

6 4. The material witness(es), Ernesto Martinez-Rodriguez and Miguel Sanchez-Martinez,
7 in this case:

8 a. Are alien(s) with no lawful right to enter or remain in the United States;
9 b. Entered or attempted to enter the United States illegally on or about
10 February 19, 2008;

11 c. Were found in a vehicle driven by defendant near Descanso, California and
12 that defendant knew or acted in reckless disregard of the fact that they were alien(s) with no lawful
13 right to enter or remain in the United States;

14 d. Were paying \$2,000-\$3,000 to others to be brought into the United States
15 illegally and/or transported illegally to their destination therein; and,

16 e. May be released and remanded immediately to the Department of Homeland
17 Security for return to their country of origin.

18 5. After the material witnesses are ordered released by the Court pursuant to this
19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
23 substantive evidence;

24 b. The United States may elicit hearsay testimony from arresting agents
25 regarding any statements made by the material witness(es) provided in discovery, and such testimony
26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
27 of (an) unavailable witness(es); and,

c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004), “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant waives the right to confront and cross-examine the material witness(es) in this case.

6. By signing this stipulation and joint motion, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant certifies further that defendant has discussed the terms of this stipulation and joint motion with defense counsel and fully understands its meaning and effect.

Based on the foregoing, the parties jointly move the stipulation into evidence and for the immediate release and remand of the above-named material witness(es) to the Department of Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

16 Dated: 3/6/08

Dated: 2-29-08

Dated: 2-29-08

JEFFREY D. MOORE

Assistant United States Attorney

~~ROBERT R. HENSSLER~~
Defense Counsel for Omar Hernandez

OMAR HERNANDEZ
OMAR HERNANDEZ
Defendant

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Omar Hernandez

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded

forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 3/4/08

U. McLean Jr.
United States Magistrate Judge

United States Magistrate Judge